APPENDIX 3

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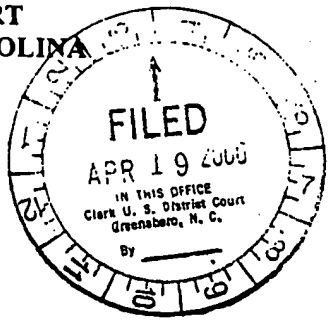
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



RHÔNE-POULENC AGRO S.A.,

Plaintiff,

v.

MONSANTO COMPANY,

And

DEKALB GENETICS CORPORATION,

Defendants.

Civil Action No: 1:97CV01138

ORDER DIRECTING ENTRY OF FINAL JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(b) AS TO CERTAIN CLAIMS ASSERTED AGAINST DEKALB GENETICS CORPORATION

Following the completion of two jury trials in this action, and the issuance of this Court's Memorandum Opinion of February 8, 2000, plaintiff Rhone-Poulenc Agro S.A. ("RPA") moved this Court for entry of final judgment pursuant to Federal Rule of Civil Procedure 54(b) as to certain claims that RPA asserted against defendant DeKalb Genetics Corporation ("DeKalb"). For the reasons set forth herein, the Court has determined that entry of final judgment pursuant to Rule 54(b) is warranted, and RPA's motion is hereby GRANTED in accordance with the terms stated below.[1]

RPA initiated this action in October 1997. RPA asserted six claims against DeKalb in its First Supplemental and Amended Complaint filed in May 1998 ("Complaint"): misappropriation

[1] RPA has moved for entry of a separate final judgment pursuant to Rule 54(b) as to the trade secret misappropriation and patent infringement claims it asserted against defendant Monsanto Company in Counts I and V of the Complaint. That motion will be granted in a separate order pursuant to Rule 54(b) that will be entered today.

of trade secrets (Count I); breach of the 1991 Assignment and Assumption Agreement ("1991 Agreement") (Count II); breach of the covenant of good faith and fair dealing as to the 1994 Calgene/RPA/DeKalb Agreement ("1994 Agreement") (Count III); rescission of the 1994 Agreement based on claims of, *inter alia*, fraudulent inducement (Count IV); patent infringement (Count V); and antitrust (Count VI).

DeKalb initially asserted two counterclaims against RPA: breach of the 1994 Agreement (First Counterclaim) and breach of the 1991 Agreement (Second Counterclaim). On February 23, 1999, DeKalb amended its answer to include three additional counterclaims for: breach of the 1994 Agreement (Third Counterclaim); breach of the covenant of good faith and fair dealing in the 1994 Agreement (Fourth Counterclaim); and patent infringement (Fifth Counterclaim).

RPA dismissed Count II of its Complaint with prejudice prior to trial, pursuant to a stipulation approved by the Court on February 2, 1999, and RPA withdrew Count III. A trial on Count IV of the Complaint was held in this Court between April 5 and April 22, 1999, which resulted in a first jury verdict of liability against DeKalb and separate verdicts awarding nominal and punitive damages and unjust enrichment recovery to RPA. A second jury trial, on Counts I and V of the Complaint, was conducted between May 17 and June 2, 1999, resulting in a second jury verdict on those counts. Prior to the second trial, RPA and DeKalb entered into a separate Stipulation And Agreement that set forth the quantum of damages that DeKalb would be required to pay RPA in the event DeKalb was found liable under Counts I and/or V.

DeKalb dismissed its First Counterclaim (breach of the 1994 Agreement) with prejudice prior to trial, pursuant to a stipulation approved by the Court on February 2, 1999, and DeKalb withdrew its Second Counterclaim for breach of the 1991 Agreement. As a result of the Court's determination that the 1994 Agreement should be rescinded, DeKalb's Third and Fourth Counterclaims for breach of the 1994 Agreement were rendered moot.

On February 8, 2000, the Court issued a Memorandum Opinion setting forth the Court's rulings on post-verdict motions filed by both parties following the two trials. On the same date,

the court entered an Injunction order permanently enjoining DeKalb from infringing RPA's U.S. Patent 5,510,471 ("'471 patent"), now United States Patent RE 36,449.

As a result of the two jury trials, the Court's resolution of the post-trial motions, and the entry of the permanent injunction order, the claims that RPA asserted against DeKalb in Counts I, II, III, IV and V of the Complaint, and the claims that DeKalb asserted against RPA in DeKalb's First, Second, Third and Fourth Counterclaims, have been fully adjudicated. Entry of final judgment as to those claims is proper because there is nothing left to adjudicate as to those claims. The only claims involving DeKalb that remain pending for adjudication are RPA's antitrust claim against DeKalb in Count VI of the Complaint, DeKalb's Fifth Counterclaim for patent infringement, and RPA's counterclaim to DeKalb's patent infringement counterclaim. Discovery on these pending claims has not yet begun.

The claims involving RPA and DeKalb that have been fully and finally adjudicated in this case are easily severed from those claims that remain unadjudicated, and any proceedings in this Court on the remaining unadjudicated claims will not affect, or be affected by, an appeal of the claims that have been fully adjudicated. The unadjudicated claims involve factual matters and legal issues that are different from the factual matters and legal issues raised by the adjudicated claims. Accordingly, any future appeal of these unadjudicated claims would raise issues that are substantially different from those presented by the adjudicated claims.

Certification pursuant to Rule 54(b) would promote the interests of judicial economy by avoiding piecemeal appeals of the claims that have been decided. DeKalb has filed a notice of appeal to the United States Court of Appeals for the Federal Circuit, pursuant to 28 U.S.C. §§ 1292(a)(1) and (c)(1), from this Court's Injunction order of February 8, 2000. That appeal, which is currently pending, will encompass many – but not all – of the issues encompassed by the claims that have already been adjudicated. To avoid piecemeal review, and to allow the Federal Circuit to consider all related issues at one time, it is appropriate to enter final judgment as to those claims that have been fully adjudicated.

Having determined that there is no just reason for delay, the Court hereby directs entry of final judgment pursuant to Federal Rule of Civil Procedure 54(b) on the following claims asserted against DeKalb:

1. Judgment is entered in favor of RPA on Count IV of RPA's Complaint. RPA is hereby awarded $1 in nominal damages, $15 million in unjust enrichment recovery, and $50 million in punitive damages. RPA is also entitled to rescission of the 1994 Agreement, and that agreement is hereby rescinded.

2. Judgment is entered in favor of RPA on the trade secret misappropriation and patent infringement claims (Counts I and V of RPA's Complaint). DeKalb's defense of inequitable conduct in the prosecution of the '471 patent is hereby denied. A permanent injunction against infringement of the '471 patent has been entered against DeKalb, as set forth in the Court's Injunction order filed on February 8, 2000. RPA's request for additional equitable relief is denied. RPA is hereby awarded those damages stipulated by the parties for trade secret misappropriation and patent infringement as set forth in the Stipulation And Agreement entered into by DeKalb and RPA. RPA's claim for an award of punitive damages for trade secret misappropriation, and its motion for increased damages under 35 U.S.C. § 284 and for an award of attorneys' fees under 35 U.S.C. § 285 for patent infringement, are hereby denied.

3. All other requested relief with respect to Counts I, II, III, IV and V of RPA's First Supplemental and Amended Complaint, and with respect to DeKalb's First, Second, Third and Fourth Counterclaims against RPA, is denied.

Entry of Final Judgment is hereby ORDERED this the 19th day of April, 2000

United States District Judge